

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
SOUTHERN DIVISION

UNITED STATES OF AMERICA)
Ex Rel)
VEN-A-CARE OF THE)
FLORIDA KEYS, INC.)
a Florida Corporation,)
by and through its principal)
officers and directors,)
ZACHARY T. BENTLEY and)
T. MARK JONES,)
Plaintiff,)
v.)

ABBOTT LABORATORIES, INC.;



CIVIL ACTION NO.95-1354-CIV-GOLD

FILED IN CAMERA AND UNDER SEAL

**THIRD AMENDED COMPLAINT
For Money Damages and Civil
Penalties Under the False Claims Act
31 U.S.C. §§3729-3732**

CIVIL ACTION NO. 95-1354-CIV-GOLD

Defendants.)

**THIRD AMENDED COMPLAINT
FOR MONEY DAMAGES AND CIVIL PENALTIES UNDER THE FALSE
CLAIMS ACT 31 U.S.C. §§3729-3732**

COMES NOW, the UNITED STATES OF AMERICA ("UNITED STATES" or "GOVERNMENT"), by and through VEN-A-CARE OF THE FLORIDA KEYS, INC. ("VEN-A-CARE" or "the Relator"), and its principal officers and directors, ZACHARY T. BENTLEY, and T. MARK JONES, and by and through the undersigned attorneys on behalf of the UNITED STATES and on the Relator's own behalf and bring this action against ABBOTT LABORATORIES, INC.; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CIVIL ACTION NO. 95-1354-CIV-GOLD

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], (sometimes referred to collectively as, "DEFENDANTS"), for money damages and civil penalties arising out of the DEFENDANTS' violations of the Federal False Claims Act, 31 U.S.C., §§3729-3732 from on or about June 23, 1989 to the present date.

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SECTION NO. 1

SUMMARY OF THE ACTION

1. This is an action for damages, treble damages, civil penalties and costs against the DEFENDANTS for violations of the False Claims Act as set out in Counts I through VII, pages 299 through 314. In essence, the DEFENDANTS made false representations of prices and costs for certain of their [REDACTED], injectable and [REDACTED] drugs [REDACTED] (hereinafter sometimes referred to as the "specified infusion drugs")

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or the "specified drugs"): directly to Medicare Carriers who approve and pay Medicare claims; directly to the States' Medicaid Pharmacy Programs which approve and pay the States' Medicaid claims; and indirectly through drug price and cost reporting compendia including First Data Bank, Medical Economics, and Medi-Span. The DEFENDANTS knew that the Medicare and States' Medicaid Programs intended to base their payments of "reimbursement" for the specified infusion drugs on reasonable estimations of cost. The Medicare and Medicaid Programs relied on the prices reported by the DEFENDANTS in estimating costs. The DEFENDANTS marketed their specified infusion drugs to specialized physicians [REDACTED] clinics and infusion pharmacies, including the Relator's, through financial inducements, including but not limited to, false price markups (the "Spread"), discounts, free goods and other financial incentives. The DEFENDANTS were in a position to mislead the Medicare and Medicaid Programs because the DEFENDANTS typically report truthful prices for their other drugs that are not the subject of this action. The DEFENDANTS thus wrongfully exploited the Medicare and States' Medicaid Programs by causing them to pay the claims of the DEFENDANTS' customers at grossly inflated amounts that far exceeded a reasonable reimbursement based on an estimation of costs. The DEFENDANTS' false claims scheme damaged the Medicare and States' Medicaid Programs in excess of ONE BILLION and 00/100 DOLLARS (\$1,000,000,000.00).

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SECTION NO. 2

THE PARTIES

2. The Plaintiff in this action is the UNITED STATES. At all times material to this civil action, the United States Department of Health and Human Services ("HHS"), the Health Care Financing Administration ("HCFA"), and The Bureau of Program Operations ("BPO") were agencies and instrumentalities of the UNITED STATES and their activities, operations and contracts in administering the Medicare program were paid from UNITED STATES' funds. The UNITED STATES and its subcontractors performing on behalf of the UNITED STATES provided Medicare benefits to qualified beneficiaries which included payment of claims for the prescription drugs specified herein manufactured by the DEFENDANTS and relied upon the false and fraudulent price and cost representations made by the DEFENDANTS in approving and paying claims.

3. The States, United States Territories, and the District of Columbia provided Medicaid benefits to qualified recipients which included payment of claims for the prescription drugs specified herein manufactured by the DEFENDANTS and relied upon the false and fraudulent price and cost representations made by the DEFENDANTS in

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approving and paying claims. A significant part of said Medicaid reimbursement was paid from United States Government funds pursuant to **42 U.S.C. § 1396(b)**.

4. The Relator, VEN-A-CARE, is a corporation organized under the laws of the State of Florida, with its principal offices in Key West, Florida. The Relator's principal officers and directors include Zachary T. Bentley and T. Mark Jones, who are each citizens of the United States and reside in Key West, Florida. The Relator is an infusion pharmacy and provides prescription drugs, such as the intravenous, injectable [REDACTED] [REDACTED] specified in this Third Amended Complaint, as a Medicare Part B supplier and as a Florida Medicaid provider. The Relator has direct and independent knowledge of the information, and is the "original source" of the information on which these allegations are based within the meaning of **31 U.S.C. §3730(e)(4)(A) and (B)**. The Relator has standing to bring this action pursuant to **31 U.S.C. §3730(b)(1)**. The information upon which these allegations are based was voluntarily provided by the Relator to the Federal Government beginning in 1991 and thereafter has been frequently supplemented by the Relator.

5. The Relator, VEN-A-CARE, is a small infusion pharmacy located in Key West, Florida that, due to its position as an industry insider, became aware of the false claim scheme alleged herein. During the early 1990s, Ven-A-Care was destroyed as a viable business because it refused to engage in fee splitting arrangements with referring physicians who wished to benefit from the inflated reimbursement caused by the actions

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of the DEFENDANTS. Ven-A-Care became aware that many of the [REDACTED], inhalation, and injectable drugs [REDACTED] it provided as a specialty pharmacy were reimbursed by the Medicare and Medicaid Programs at amounts that substantially, in some cases by several thousand percent, exceeded the cost of the drug. It was the huge potential profit spreads generated by the variance between the actual cost of the drugs and the "reimbursement" amounts that many referring physicians demanded a share of. Ven-A-Care's principals were aware that Medicare and Medicaid reimbursed for drugs at amounts that were intended to be based on an estimation of cost and not provide for huge windfall profits at the GOVERNMENT's expense. Ven-A-Care attempted to alert the responsible state and federal government officials to the problem it faced. However, the government agencies lacked sufficient resources and expertise to adequately respond. Accordingly, the Relator commenced this action based upon its original source information.

6. The Defendant, ABBOTT LABORATORIES, INC. ("ABBOTT"), is a corporation organized under the laws of Delaware, with its principal offices in Abbott Park, Illinois. At all times material to this civil action, ABBOTT has transacted business in the Federal Judicial District of the Southern District of Florida by, including, but not limited to, selling and distributing prescription drugs to purchasers within the Southern District of Florida.

7. [REDACTED]

[REDACTED]

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**PAGES 15 THROUGH 23
HAVE BEEN COMPLETELY REDACTED
WHICH INCLUDES THE REMAINDER OF
PARAGRAPH 7
THROUGH THE BEGINNING OF PARAGRAPH 32**

Pages 24-316 redacted

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DOLLARS (\$10,000.00) and no less than FIVE THOUSAND DOLLARS (\$5,000.00) for each false statement;

8. For all fees and costs of this civil action; and
9. For such other and further relief as the Court deems just and equitable.

Further, the Relator, on its behalf, requests that it receive thirty percent (30%), [twenty-five percent (25%) if the United States Government intervenes and proceeds with this case] or such other maximum amount as permitted by law, of the proceeds of this action or settlement of this action collected by the UNITED STATES, plus an amount for reasonable expenses incurred, plus reasonable attorneys' fees and costs of this action. The Relator requests that its percentage be based upon the total value recovered, including any amounts received from individuals or entities not parties to this action.

DEMAND FOR JURY TRIAL

A jury trial is demanded in this case.

Respectfully submitted,

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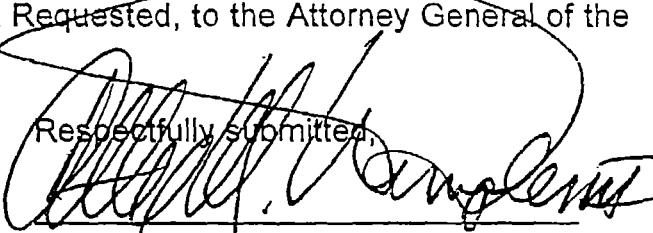
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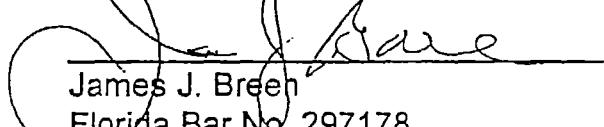
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9/1 day of December, 1999, I caused an original and a copy of this Third Amended Complaint to be filed under seal and in camera for sixty (60) days and not to be served on the Defendants named herein or until further order of this Honorable Court.

I HEREBY CERTIFY that prior to this 9/1 day of December, 1999, I caused a copy of this Third Amended Complaint and written disclosure of substantially all material evidence and information the Relator, VEN-A-CARE possesses to be served on the Government pursuant to Rule 4(i), Fed.R.Civ.P., prior to the filing of this Third Amended Complaint by delivering a copy of the Summons, Third Amended Complaint, material evidence and information to the United States Attorney for the Southern District of Florida, and by sending a copy of the Summons, Third Amended Complaint, material evidence and information by Certified Mail, Return Receipt Requested, to the Attorney General of the United States in Washington, D.C.

Respectfully submitted,


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